APPENDIX A

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

Nos. 95-56790, 96-56262 and 96-56558.

Vickie L. EDWARDS; Kathleen McCaulley,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

Vickie L. EDWARDS; Kathleen McCaulley,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

Vickie L. EDWARDS; Kathleen McCaulley,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

Argued and Submitted Nov. 3, 1997.

Decided Aug. 11, 1998.

Sidewalk counselors challenged city ordinance limiting demonstration activity near health care facilities and places of worship. The United States District Court for the Central District of California, Richard A. Gadbois, Jr., J., 883 F.Supp. 1379, preliminarily enjoined ordinance's enforcement. City appealed. The Court of Appeals vacated and remanded. The District Court, Ronald S. W. Lew, J., en-

joined enforcement of three of four challenged provisions and awarded counselors fees and costs. City appealed. The Court of Appeals held that: (1) city's interests were sufficient, under First Amendment, to sustain ordinance; (2) ordinance provisions creating fixed buffer zone within eight feet of entrances to health care facilities and places of worship was narrowly tailored to serve city's interests and left open ample alternative means of communication; and (3) provisions creating floating buffer zone within 100 feet of facilities and places of worship were not narrowly tailored to serve city's interests.

Affirmed in part, reversed in part, and attorney fees and costs vacated.

Appeal from the United States District Court for the Central District of California; Richard A. Gadbois, Jr., District Judge, Presiding.
D.C. No. CV-94-02243-RG-JRx.

Appeals from the United States District Court for the Central District of California; Ronald S. W. Lew, District Judge, Presiding.
D.C. No. CV-94-02243-RSWL.

Before: BROWNING, BRUNETTI and FERNANDEZ, Circuit Judges.

PER CURIAM:

Vickie Edwards and Kathleen McCaulley, two "sidewalk counselors," challenged an ordinance of the City of Santa Barbara, California limiting demonstration activity near health care facilities and places of worship, passed after a protracted history of harassment by anti-abortion protestors. The ordinance prohibits demonstration within eight feet of entrances to medical facilities or places of worship, and permits a patient or worshiper to create an eight foot "floating buffer zone" or "bubble" within one hundred feet of

such entrances by asking the demonstrator to withdraw.[1] The district court preliminarily enjoined enforcement of the ordinance. We remanded for reconsideration in light of Sabelko v. City of Phoenix, 68 F.3d 1169 (9th Cir.1995). On remand, the district court enjoined three of the four challenged provisions, upholding only the floating buffer zone within one hundred feet of a health care facility. The plaintiffs successfully moved for supplemental fees and costs. The City appealed the grant of the injunction and the award of fees and costs.

In the interim, the Supreme Court vacated our decision in Sabelko and remanded in light of Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997). On remand, we held the Phoenix floating buffer zone provision unconstitutional and enjoined its enforcement. See Sabelko v. City of Phoenix, 120 F.3d 161, 165 (9th Cir.1997).

Guided by Schenck and Sabelko, we affirm the district court's preliminary injunction enjoining enforcement of the floating buffer zone provision. However, we conclude the fixed driveway provisions are a reasonable time, place, and manner restriction, and vacate the preliminary injunction of their enforcement.

I.

Ordinance 4812 prohibits all demonstration activity within a specified distance of health care facilities and places of

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[1] See Section 9.99.030 ("the driveway provision" or "fixed buffer zone" prohibiting demonstration within eight feet of entrances to medical clinics or places of worship); see also Section 9.99.020 (the "bubble" or "floating buffer zone" permits people within one hundred feet of such entrances to request that anyone who approaches them "withdraw to a distance of . . . eight feet").

worship without regard to the message conveyed.[2] Because it is content neutral, the ordinance passes constitutional muster if it is "narrowly tailored to serve a significant government interest and . . . leave[s] open ample alternative channels of communication." Frisby v. Schultz, 487 U.S. 474, 482, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (internal quotations omitted).[3] Although the regulation "must be *1216 narrowly tailored to serve the government's legitimate, content-neutral interests[,] . . . it need not be the least restrictive or least intrusive means of doing so." Ward v. Rock Against Racism, 491 U.S. 781, 798-99, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).[4]

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[2] It is undisputed that the ordinance prohibits speech in a traditional public forum. See, e.g., Frisby v. Schultz, 487 U.S. 474, 479-82, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988).

[3] Plaintiffs argue the ordinance was designed to suppress their viewpoint. See, e.g., Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (local ordinance struck down because of viewpoint bias reflected in the legislative history). However, an ordinance may be motivated by a concern about the effects of speech without running afoul of the First amendment. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47-49, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). The fact that a majority of those prosecuted under the ordinance have been anti-abortion protesters does not permit an automatic inference of discriminatory purpose in its adoption.

The plaintiffs also argue that the ordinance has been selectively enforced against them, citing the deposition responses of two police officers to hypothetical questions. This argument lacks force, given the small number of citations issued by these two officers and the fact that thirty-one other officers issued the remaining citations. Moreover, the training video clearly shows the Deputy City Attorney explaining that all demonstration activity is prohibited regardless of the "side."

[4] See also Madsen v. Women's Health Center, Inc., 512 U.S. 753, 764- 65, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (announcing a newly heightened standard for content-neutral injunctions, but restating the Ward test for legislative enactments of general applicability).

A single legitimate government interest may be sufficient to sustain a content-neutral regulation. See, e.g., Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 650 n. 13, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (declining to consider second and third interests advanced by the state to justify a time, place, and manner restriction because the first adequately supported the regulation). The City contends three valid interests are served by the ordinance: (1) protecting persons seeking medical services or engaging in worship from harassment or intimidation; (2) ensuring access to medical facilities and places of worship; and (3) ensuring traffic safety. The Supreme Court has held these interests sufficient. See Schenck, 117 S.Ct. at 866 (government interests in "ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services" are "certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics"). The City must also demonstrate that the ordinance is "narrowly tailored" to serve these valid interests and "leave[s] open ample alternative channels of communication." Ward, 491 U.S. at 791, 109 S.Ct. 2746.

II.

In district court, the plaintiffs-appellees successfully challenged the driveway provisions creating a fixed buffer zone within eight feet of the entrances to medical facilities and places of worship, as well as the floating buffer zone in connection with places of worship.[5]

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[5] The district court upheld the floating buffer zone within one hundred feet of a health care facility and the plaintiffs have not appealed that decision. On October 6, 1997, in light of our decision upon remand from the Supreme Court in Sabelko, the district court granted plaintiffs' renewed motion for preliminary injunction barring enforcement of the floating buffer zone as applied to health care facilities.

1. Driveway provisions.

Recent Supreme Court precedent has upheld much larger fixed buffer zones using the more rigorous standard for content-neutral injunctions. See Madsen, 512 U.S> at 770, 114 S.Ct. 2516; Schenck, 117 S.Ct. at 868. Against this background, the driveway provision does not sweep too broadly. A distance of eight feet is not too great to limit most forms of protest, and conversation is easily possible at that distance. The provision is narrowly tailored to the City's objectives: it ensures access to health care facilities by providing a clear, easily enforced zone of protection for the driveway entrances; facilitates the free flow of traffic by preventing protesters from blocking entrances; and furthers the City's interest in public safety and prevents direct "face to face" confrontations that could escalate into violence by physically separating demonstrators from persons entering the driveway areas. See Schenck, 117 S.Ct. at 866.

Although the driveway provision in connection with places of worship is unrelated *1217 to the City's interest in protecting patients in need of medical care, it is narrowly tailored to the City's interest in ensuring access to religious worship. It permits ample alternative avenues of communication, by placing no limit on speech or expressive activity outside a narrow zone.

2. Floating buffer zone.

With respect to the floating buffer zone, our decision in Sabelko, invalidating an eight-foot buffer zone on the grounds that it was not narrowly tailored, is dispositive. Like the provision challenged here, the invalidated buffer zone could be invoked within one hundred feet of a clinic. Unlike the ordinance challenged in Sabelko, Santa Barbara's ordinance has a severability clause. We, therefore, need not invalidate the entire ordinance. See Sabelko, 120 F.3d at 165.

III.

On appeal, the plaintiffs have prevailed on only one of their challenges to the ordinance. We therefore vacate the original award and the supplemental award of attorneys' fees and costs and remand for redetermination of the amount due.[6] The district court should arrive at a reasonable fee award by identifying the specific hours expended on the floating buffer zone provision or by reducing the overall award to reflect the plaintiffs' limited success. See Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782, 791-92, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989).

Each party shall bear its own costs.

REVERSED IN PART; AFFIRMED IN PART; ATTORNEYS' FEES AND COSTS VACATED.

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[6] The district court clearly stated the applicable standard for evaluating Section 1988 awards in its October 24, 1995 order, granting the plaintiffs' motion for attorneys' fees. The supplemental award of fees and costs was also within the discretion of the district court. In each instance, the request for fees was supported by billing statements.

APPENDIX B

[stamp—FILED; OCT - 6 1998; CATHY A. CATTERSON, CLERK; U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 95-56790
D.C. No. CV-94-02243-RG-JRx

VICKIE L. EDWARDS; KATHLEEN McCAULLEY,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

NOW LEGAL DEFENSE AND EDUCATION FUND, etc.
Amici Curiae.

No. 95-56262
D.C. No. CV-94-02243-RSWL

VICKIE L. EDWARDS; KATHLEEN McCAULLEY,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

NOW LEGAL DEFENSE AND EDUCATION FUND, CALIFORNIA MEDICAL ASSOCIATION; CITY AND COUNTY OF SAN FRANCISCO,
Amici Curiae.

No. 96-56558
D.C. No. CV-94-02243-RSWL

VICKIE L. EDWARDS; KATHLEEN McCAULLEY,
Plaintiffs-Appellees,

v.

CITY OF SANTA BARBARA,
Defendant-Appellant.

NOW LEGAL DEFENSE AND EDUCATION FUND, CALIFORNIA MEDICAL ASSOCIATION; CITY AND COUNTY OF SAN FRANCISCO,
Amici Curiae.

ORDER

Before: BROWNING, BRUNETTI and FERNANDEZ, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 359(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

No. 94-15495.

Katherine SABELKO and Nancy Barto,
Plaintiffs-Appellees,

v.

The CITY OF PHOENIX; Paul Johnson; Thelda Williams; Frances Emma Barwood; Skip Rimsza; Craig Tribken; John Nelson; Kathy Dubs; Salomon F. Leija; Calvin C. Goode,
Defendants-Appellants.

July 14, 1997.

As Amended Aug. 1, 1997.

Antiabortion "sidewalk counselors" brought action challenging, on First Amendment grounds, ordinance that imposed "floating buffer zone" restriction upon demonstrators outside of health care facilities. The United States District Court for the District of Arizona, Stephen M. McNamee, J., 846 F.Supp. 810, issued injunction against enforcement, and city appealed. After the Court of Appeals reversed, the United States Supreme Court vacated and remanded for further consideration. Upon remand, the Court of Appeals, Beezer, Circuit Judge, held that: (1) ordinance was content-neutral; (2) ordinance was not narrowly tailored, and thus violated First Amendment's free speech clause; and (3) Court of Appeals lacked authority to remedy ordinance.

Affirmed.

On Remand from the United States Supreme Court, D.C. No. CV-93-02229-SMM.

Before: SCHROEDER, BEEZER and THOMPSON, Circuit Judges.

ORDER

The opinion filed on October 19, 1995 is hereby withdrawn.

OPINION

BEEZER, Circuit Judge.

We reconsider whether a City of Phoenix ordinance which imposes a "floating buffer zone" restriction upon demonstrators outside of health care facilities violates the First Amendment. We affirm the district court's decision declaring the Phoenix ordinance unconstitutional and enjoining its enforcement.

I

In 1993, the City of Phoenix, Arizona enacted an ordinance limiting demonstration activity near health care facilities due to concern about harassment outside such facilities. The ordinance makes it unlawful "for any person, in the course of demonstration activity *163 within the access area of a health care facility, to fail to withdraw upon a clearly communicated request to do so to a distance of a least eight (8) feet away from any person who has made the request." [1]

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[1] Specifically, the ordinance provides:

ORDINANCE NO. G3705

AN ORDINANCE AMENDING CHAPTER 23, ARTICLE 1 OF THE PHOENIX CITY CODE, BY ADDING SECTION 23-10.1, RELATING TO UNIMPEDED ACCESS TO HEALTH CARE FACILITIES; AND DECLARING AN EMERGENCY.

[Footnote 1 continued on following page]

Plaintiffs-Appellees Katherine Sabelko and Nancy Barto refer to themselves as "sidewalk counselors" who engage in demonstration activity outside abortion clinics in Phoenix. The plaintiffs filed a 42 U.S.C. § 1983 action in district court seeking declaratory and injunctive relief against the City of Phoenix on the grounds that the ordinance as applied

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WHEREAS, unimpeded access to health care services is critically and uniquely important to the public health, safety and welfare; and

WHEREAS, persons attempting to access health care facilities are subject to harassing or intimidating activity tending to impede their access to those facilities by demonstrators approaching within extremely close proximity; and

WHEREAS, such activity near health care facilities creates a "captive audience" situation where persons seeking services cannot avoid the area outside the facilities, and their physical and emotional conditions may make them especially vulnerable to the adverse physiological and emotional effects of such harassing or intimidating activities directed at them from extremely close proximity; and WHEREAS, such activity in extremely close proximity tends to undermine a person's right to privacy and interference with a person's right to seek legitimate health care treatment and counseling; and

WHEREAS, this ordinance does not preclude all protesting, picketing, demonstrating, leafleting or educational activities near a health care facility but is a necessary time, place and manner restriction intended to reconcile and protect the First Amendment rights of demonstrators and the rights of persons using health care facilities to be free from direct confrontation, hindrance, harassment, intimidation and harm; and

WHEREAS, existing law does not adequately protect such access to health care facilities; NOW THEREFORE,

BE IT ORDAINED by the Council of the City of Phoenix as follows:

SECTION 1. Chapter 23, Article 1, Phoenix City Code, is amended by adding section 23-10.1 to read:

Sec. 23-10.1 IMPEDING ACCESS TO HEALTH CARE FACILITIES.

A. It is unlawful for any person, in the course of demonstration activity within the access area of a health care facility, to fail to withdraw upon a

[Footnore 1 continued on following page]

violated the free speech provisions of the First Amendment. In a published decision, the district court declared the ordinance unconstitutional and issued an injunction. See Sabelko v. City of Phoenix, 846 F.Supp. 810 (D. Ariz. 1994). We reversed the district court. Sabelko v. City of Phoenix, 68 F.3d 1169 (9th Cir.1995), vacated, ___ U.S. ___, 117 S.Ct. 1077, 137 L.Ed.2d 212 (1997); but see Sabelko, 68 F.3d at 1173 (Beezer, J. dissenting). The Supreme Court vacated our judgment and remanded "for further consideration in light of Schenck v. Pro-Choice Network of Western New

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clearly communicated request to do so to a distance of at least eight (8) feet away from any person who has made the request.

B. For purposes of this section:

1."Across area" means any portion of a public street or other public place or any place open to the public within one hundred (100) feet of an exterior wall or entryway of a health care facility.

2. "Demonstration activity" includes but is not limited to protesting, picketing, distributing literature, attempting to impede access, or engaging in oral protest, education or counseling activities.

3. "Health care facility" means any hospital, clinic, office, building or other place used to provide medical, psychological, nursing or other health care services, including family planning counseling and pregnancy-related services.

C. For purposes of this section, distance shall be measured from that part of the closest demonstrator's body that is nearest to the closest part of the requesting person's body. The term "body" includes any natural or artificial extension of a person's body including but not limited to an outstretched arm or a hand-held sign.

SECTION 2. WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

PASSED by the Council of the City of Phoenix this 17th day of November, 1993.

York, [___ U.S. ___, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997)].'' Sabelko v. City of Phoenix, ___ U.S. ___, 117 S.Ct. 1077, 137 L.Ed.2d 212 (1997).

*164 II

We first determine whether Phoenix ordinance No. G3705 is content- neutral. We inquire whether ''the government has adopted a regulation of speech 'without reference to the content of the regulated speech.' '' Madsen v. Women's Health Center, Inc., 512 U.S. 753, 763, 114 S.Ct. 2516, 2523, 129 L.Ed.2d 593 (1994) (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S.Ct. 2746, 2754, 105 L.Ed.2d 661 (1989)). In Madsen, the Supreme Court considered an injunction prohibiting demonstrators from ''congregating, picketing, patrolling, demonstrating or entering'' within 36 feet of a health care clinic. Id. at 759, 114 S.Ct. at 2522. The Court held that ''none of the restrictions imposed by the court were directed at the contents of petitioner's message.'' Id. at 763, 114 S.Ct. at 2523.

The Phoenix ordinance regulates all demonstration activity within 100 feet of a clinic. The term ''demonstration activity'' is defined as including, but is not limited to, ''protesting, picketing, distributing literature, attempting to impede access, or engaging in oral protest, education or counseling activities.'' Like the injunction in Madsen, the Phoenix ordinance does not refer to the content of the speech that it regulates. It is content-neutral.

III

We next determine whether the content-neutral, time, place and manner restrictions in the Phoenix ordinance are ''narrowly tailored to serve a significant government interest, and leave[s] open ample alternative channels of communication.'' Ward, 491 U.S. at 791, 109 S.Ct. at 2753; see Madsen, 512 U.S. at 764, 114 S.Ct. at 2524.

A

The Supreme Court has held that the government has a substantial interest "in protecting a woman's freedom to seek lawful medical or counseling services in connection with her pregnancy." Madsen, 512 U.S. at 767, 114 S.Ct. at 2526; see Schenck, ___ U.S. at ___, 117 S.Ct. at 866. The Court has also indicated that a state has an interest in protecting medical privacy. The Court observed that targeted picketing of a clinic could threaten both the psychological and the physical well-being of a patient held "captive" by medical circumstance. Madsen, 512 U.S. at 768, 114 S.Ct. at 2526 (comparing the government's strong interest in residential privacy, acknowledged in Frisby v. Schultz, 487 U.S. 474, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988), with medical privacy).

The Phoenix ordinance serves such interests. On its face the ordinance seeks to protect the users of the clinic from "harassing or intimidating activity tending to impede . . . access to those facilities" and the "adverse physiological and emotional effects" of harassment. These substantial interests in allowing access, eliminating harassment and preventing intimidating activity will support a narrowly tailored ordinance.

B

The Schenck decision guides our review in determining whether the Phoenix ordinance is narrowly tailored. In that case, the Supreme Court considered, inter alia, floating buffer zones similar to the one imposed by the Phoenix ordinance. The injunction at issue in Schenck banned demonstration within fifteen feet of any person seeking to enter or leave a health care clinic. ___ U.S. at ___, 117 S.Ct. at 862. The injunction specified, however, that two persons could enter the floating buffer zones to attempt

"sidewalk counseling" unless they were asked to cease and desist. Id.

The Court struck down the floating buffer zones because "they burden more speech than is necessary to serve the relevant government interests."[2] Id. at ___ - ___, 117 S.Ct. at 866-67. The Court observed that *165 floating buffer zones prevent leafleting and communication at a normal conversational distance, both "classic forms of speech that lie at the heart of the First Amendment." Id. at ___ - ___, 118 S.Ct. at 867. Because this broad prohibition "floated", the court determined that demonstrators would have difficulty determining how to comply with the injunction:

> Protesters could presumably walk 15 feet behind the individual, or 15 feet in front of the individual while walking backwards. But they are then faced with the problem of watching out for other individuals entering or leaving the clinic. . . . [A]ttempts to stand 15 feet from someone entering or leaving a clinic and to communicate a message–certainly protected on the face of the injunction–will be hazardous if one wishes to remain in compliance with the injunction.

Id. The Court concluded that this lack of certainty about how to comply with the injunction created a substantial risk that more speech would be burdened than the injunction prohibited. Because other means might exist which would protect governmental interests and provide certainty regarding compliance, the Court held that the floating buffer zones

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[2] In Madsen, the Supreme Court stated that injunctions, as compared to content-natural, generally applicable statutes, require a "more stringent application of general First Amendment principles." Madsen, 512 U.S. at 765, 114 S.Ct. at 2524. The standard for injunctions is whether the challenged provisions burden no more speech than necessary to a serve a significant government interest. Id. at 765-67, 114 S.Ct. at 2525; Schenck, ___ U.S. at ___ - ___, 117 S.Ct. at 866-67.

burdened more speech than was necessary. Id. at ___, 117 S.Ct. at 868.

The Phoenix ordinance suffers the same defects as the injunction in Schenck. It contains a broad prohibition on speech with which it is difficult to comply without risking a violation of the ordinance. An individual within the access area to a clinic can invoke the eight-foot floating buffer zone, effectively preventing handbilling and normal conversation. Demonstrators who attempt communication with an individual must constantly monitor themselves to ensure that they don't encroach upon that individuals's or another individual's floating buffer zone. Further, the demonstrators are faced with the problem of determining which people within the access area have invoked the protection offered by the buffer zone.

An ordinance is narrowly tailored "if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Frisby, 487 U.S. at 485, 108 S.Ct. at 2503. As in Schenck, a Phoenix demonstrator would encounter difficulty in knowing how to remain compliant. This uncertainty concerning compliance establishes a substantial risk that more speech will be eliminated than the ordinance itself prohibits. As such, the Phoenix ordinance lacks the narrow tailoring necessary to survive our scrutiny.[3]

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[3] Because we find that the Phoenix ordinance is not narrowly tailored, we need not decide whether it "leave[s] open ample alternative channels of communication." Ward, 491 U.S. at 791, 109 S.Ct. at 2753.

IV

We do not have the power to remedy the Phoenix ordinance. The ordinance contains no severability clause nor can the remainder of the ordinance function independently of the constitutionally infirm floating buffer provision. See Desert Outdoor advertising v. City of Moreno Valley, 103 F.3d 814, 821 (9th Cir.1996) (''whether partial invalidation is appropriate depends on the intent of the City in passing the ordinance and whether the balance of the ordinance can function independently.'' Id. (quotation omitted)). Indeed, the floating buffer provision is the only restriction on speech in the ordinance. Moreover, ''[c]onsistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw.'' Planned Parenthood v. Casey, 505 U.S. 833, 870, 112 S.Ct. 2791, 2817, 120 L.Ed.2d 674 (1992) (opinion of O'Connor, Kennedy and Souter, JJ.).

V

The Phoenix Ordinance impermissibly encroaches on First Amendment freedoms and its enforcement should be enjoined. We affirm the district court's judgment.

AFFIRMED.

APPENDIX D

Chapter 9.99

ACCESS TO HEALTH CARE FACILITIES AND PLACES OF WORSHIP

Sections:

9.99.010 Definitions.
9.99.020 Impeding Access Prohibited.
9.99.030 Access to Driveway Areas.
9.99.040 Private Right of Action.

9.99.010

As used in this Chapter, the following terms and phrases shall have the indicated meanings:

A. ACCESS AREA. Any portion of a public street or other public place or any place open to the public within one hundred (100) feet of the premises of a health care facility or place of worship.

B. HEALTH CARE FACILITY. Any medical or health facility, hospital or clinic within the City which is licensed under State law or any building, office or other place within the City regularly used by any health care provider licensed under State law to provide medical, nursing, or health care or advice to patients. A health care facility includes but is not limited to any buildings, appurtenances and grounds, entrances, parking facilities, and driveways.

C. PLACE OF WORSHIP. A place of worship includes but is not limited to any buildings, appurtenances and grounds, entrances, parking facilities, and driveways where persons gather to worship when the same are used solely and exclusively for religious worship.

D. DEMONSTRATION ACTIVITY. All expressive and symbolic conduct, whether active or passive, which shall include, but not be limited to, protesting, picketing, distributing literature, and engaging in oral or silent protest, education or counselling activities.

E. DRIVEWAY AREA. That portion of a street right-of-way (including a sidewalk) generally improved for the purposes of providing vehicular access to adjacent private property. At the request of a health care facility or place of worship, the City of Santa Barbara will indicate (such as through the use of painted lines) the perimeter boundaries of the driveway area. (Ord. 4812, 1993.)

9.99.020 Impeding Access Prohibited.

A. DEMONSTRATION ACTIVITY - OBLIGATION TO WITHDRAW. No person, in the course of demonstration activity within the access area of a health care facility or place of worship, acting alone or in concert with others, shall impede or hamper the free access to or departure from any health care facility or place of worship by failing to withdraw immediately to a distance of at least eight (8) feet away from any person who has requested such withdrawal. ''Impede'' or ''Hamper'' means to obstruct, hinder or delay.

B. WITHDRAWAL. For purposes of this Section, withdrawal may be requested by a person verbally, or by carrying or wearing a visible sign clearly indicating such withdrawal request. Statements by a person, or signs carried or worn by a person displaying words or symbols such as or similar in effect to ''stop,'' ''stop it,'' ''withdraw,'' ''back off,'' ''get away,'' or ''leave me alone'' shall be sufficient to constitute to request to withdraw under this Section. Failure to comply immediately with any such request shall constitute a violation of this Section. Mere statements of opinion or disagreement made in the absence of a request to withdraw shall not be construed to be a request to withdraw under this Section.

C. DISTANCE. Distance under this Section shall be measured from that part of the closest demonstrator's body that is nearest to the closest part of the requesting person's body. For purposes of the preceding sentence, the term

"body" shall include any natural or artificial extension thereof, including, but not limited to, an outstretched arm or a handheld sign. (Ord. 4812, 1993.)

9.99.030 Access to Driveway Areas.

No person shall conduct any demonstration activity within the driveway area or within eight (8) feet of the driveway area of a health care facility or place of worship, provided however that it shall be lawful for a person to use a public sidewalk or street right-of-way adjacent to a health care facility or place of worship in order to traverse a driveway area. No person shall impede access to a driveway entrance of a health care facility or place of worship by any conduct which delays or impedes the flow of pedestrian or vehicular traffic in or out of such facility. (Ord. 4812, 1993.)

9.99.040 Private Right of Action

A. REMEDIES. Any person who is seeking or intends to seek access to a health care facility or place of worship and is aggrieved by an act prohibited by this Chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate or proposes to violate its provisions.

B. ATTORNEY FEES – CIVIL PENALTIES. Any person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorneys' fees and such other relief as determined by the court. In addition to all other damages, the court may award to the aggrieved person a civil penalty of up to One Thousand Dollars ($1,000) for each violation.

C. REMEDIES NOT EXCLUSIVE. The remedies provided by this Section are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive. (Ord. 4812, 1993)